

**COLLECTING FROM A BUSINESS:  
Collecting Judgments against Business  
Debtors**

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## **I. Procedures and Issues with Charging Orders against Nebraska Limited Liability Companies and Partnerships**

### **A. Charging Orders against General Partnerships**

Charging orders are creatures of Nebraska statutes. The statutes governing charging orders against partnership interests versus LLC interests are largely interchangeable, and will involve the use of similar filings with some modifications.

The Nebraska statute governing charging orders against partnership interests is relatively recent, enacted in current form in 1997 by L.B. 523 § 30. Neb. Rev. Stat. § 67-430(1) (Reissue 2009) provides for charging orders on partnership interests:

On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

“A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.”<sup>1</sup>

Before foreclosure, a charged partnership interest may be redeemed by the judgment debtor, one or more partners with non-partnership property, or one or more partners with partnership property, with consent.<sup>2</sup> The partner-debtor also remains entitled to seek exemptions under Nebraska law.<sup>3</sup> This charging order remedy is the “exclusive remedy by which a judgment creditor of a partner . . . may satisfy a judgment out of the judgment debtor’s transferable interest in the partnership.”<sup>4</sup>

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<sup>1</sup> Neb. Rev. Stat. § 67-430(2) (Reissue 2009).

<sup>2</sup> Neb. Rev. Stat. § 67-430(3) (Reissue 2009).

<sup>3</sup> Neb. Rev. Stat. § 67-430(4) (Reissue 2009); *See also, e.g.*, Neb. Rev. Stat. §§ 25-1552 and 25-1556 (Reissue 2016).

<sup>4</sup> Neb. Rev. Stat. § 67-430(5) (Reissue 2009).

**Practical Pointer:** If a judgment debtor wants to claim exemptions, then the debtor will have to file a pleading with the court setting forth the claimed exemptions and a request for hearing, with reference to appropriate statutes. The form for any debtor claiming exemptions is set forth by statute.<sup>5</sup> If a debtor fails to claim exemptions by requesting a hearing, creditors may argue the debtor has waived any potential exemptions that may have applied if the debtor raises exemptions later.

Entry of a charging order against a partner will cause a partner's dissociation from the partnership if there is unanimous consent by remaining partners and the charging order is foreclosed.<sup>6</sup> A partner is also dissociated where the partner voluntarily executes an assignment of the partnership interest for the benefit of creditors.<sup>7</sup> If the partner's dissociation because of a charging order or assignment of the partnership interest is a breach under the terms of a partnership agreement, the partner's dissociation may be considered "wrongful" and may make the partner liable to other partners for damages.<sup>8</sup> On application by a transferee of a partner's interest, or if agreed to in the partnership agreement, a charging order against or assignment of the partnership interest by a partner may also result in dissolution and winding up of the partnership business.<sup>9</sup>

Creditors should pay close attention to exactly what they stand to receive in seeking a charging order against a debtor's partnership interest. "A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily."<sup>10</sup> "The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property."<sup>11</sup> Importantly, the creditor-transferee is not entitled to participate in "the management or conduct of the partnership business," cannot obtain "access to information concerning

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<sup>5</sup> Neb. Rev. Stat. § 25-1516 (Reissue 2016).

<sup>6</sup> Neb. Rev. Stat. § 67-431(4)(b) (Reissue 2009).

<sup>7</sup> Neb. Rev. Stat. § 67-431(6)(b) (Reissue 2009).

<sup>8</sup> Neb. Rev. Stat. § 67-432(2)-(3) (Reissue 2009).

<sup>9</sup> Neb. Rev. Stat. § 67-439(3) and (6) (Reissue 2009).

<sup>10</sup> Neb. Rev. Stat. § 67-427 (Reissue 2009).

<sup>11</sup> Neb. Rev. Stat. § 67-428 (Reissue 2009).

partnership transactions,” and cannot “inspect or copy the partnership books or records.”<sup>12</sup> Instead, the creditor-transferee is only entitled to receive distributions in the ordinary course of partnership business, in equal partner shares or as described in a partnership agreement, or upon dissolution and winding up.<sup>13</sup> The debtor-transferor retains the remaining partnership rights.<sup>14</sup> The partnership need not recognize the rights of a creditor-transferee until it has “notice” of the transfer as set forth in the Partnership Act’s definitions provision.<sup>15</sup>

To date, there are no cases by the Nebraska Supreme Court/Court of Appeals discussing charging orders on partnership interests noted within the Nebraska Revised Statutes (Annotated).<sup>16</sup> The Nebraska Supreme Court, however has discussed the predecessor statute to § 67-430. The Court held one remedy available to an ex-wife for unpaid property settlement funds against an ex-husband who owned a partnership interest was through a charging order against the ex-husband’s interest in the partnership.<sup>17</sup> Though the charging order in *Novak* was governed by the former Neb. Rev. Stat. § 67-325, *Novak* provides persuasive authority for using Neb. Rev. Stat. § 67-430 to achieve a similar result for both marital or non-marital creditors.

## **B. Charging Orders against Limited Partnerships**

Nebraska statutes governing charging orders against persons or entities with interests in a limited partnership are similar to those used for persons or entities with interests in general partnerships. Limited partnership charging orders are again governed by a relatively recent statute, enacted in current form in 1989 by L.B. 482 § 46. The relevant statute provides:

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<sup>12</sup> Neb. Rev. Stat. § 67-429(1)(c) (Reissue 2009).

<sup>13</sup> Neb. Rev. Stat. § 67-429(2) (Reissue 2009).

<sup>14</sup> Neb. Rev. Stat. § 67-429(2) and (4) (Reissue 2009).

<sup>15</sup> Neb. Rev. Stat. § 67-429(5) (Reissue 2009); *see also* Neb. Rev. Stat. § 67-403 (Reissue 2009).

<sup>16</sup> *See* <http://nebraskalegislature.gov/laws/statutes.php?statute=67-430> (Last Accessed Sept. 2, 2017).

<sup>17</sup> *Novak v. Novak*, 245 Neb. 366, 370 513 N.W.2d 303, 306 (1994), *overruled on other grounds by Smeal Fire Apparatus Co. v. Kreikemeier*, 782 N.W.2d 848 (Neb. 2010) and *Hossaini v. Vaelizadeh*, 808 N.W.2d 867 (Neb. 2012).

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, *the judgment creditor has only the rights of an assignee of the partnership interest.* The Nebraska Uniform Limited Partnership Act does not deprive any partner of the benefit of any exemption laws applicable to his or her partnership interest.<sup>18</sup>

It is important to note that, under this language, creditor-assignees of interests in limited partnerships may arguably have a greater opportunity to participate in the partnership than creditor-assignees of interests in general partnerships. To understand the rights of a creditor receiving a charging order against a partner in a limited partnership, creditors must look to the rights granted to assignees of partnership interests.

An assignee of an interest in a limited partnership is entitled to share in things like profits and losses, receive distributions, and receive allocations of “income, gain, loss, deduction, credit, or similar item[s]” to the extent of the assignment.<sup>19</sup> The extent of assignments or terms under which an assignment can be carried out may be limited by the partnership agreement.<sup>20</sup> The assigning partner loses all rights to participate in the partnership upon assignment and admission of the assignee pursuant to § 67-274.<sup>21</sup> An assignee’s liability is limited to acts occurring after the assignee is admitted to the limited partnership.<sup>22</sup>

As with general partnership interests, a limited partnership interest is personal property and does not entitle a creditor to possess or utilize partnership property in any specific way.<sup>23</sup> A creditor-assignee who is admitted as a limited partner by consent of

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<sup>18</sup> Neb. Rev. Stat. § 67-273 (Reissue 2009) (emphasis added).

<sup>19</sup> Neb. Rev. Stat. § 67-272(a)(3) (Reissue 2009).

<sup>20</sup> Neb. Rev. Stat. § 67-272(a) (Reissue 2009).

<sup>21</sup> Neb. Rev. Stat. § 67-272(a)(4) (Reissue 2009); *see also* Neb. Rev. Stat. § 67-274 (Reissue 2009).

<sup>22</sup> Neb. Rev. Stat. § 67-272(c) (Reissue 2009).

<sup>23</sup> Neb. Rev. Stat. § 67-271 (Reissue 2009).

other partners is also liable for the obligations of her assignor to contribute to the partnership, if any are contained in the partnership agreement, under § 27-260.<sup>24</sup>

### **C. Charging Orders against Limited Liability Companies**

Nebraska statutes governing charging orders against LLCs are the most recently enacted of the group; these statutes took effect in their current form in 2010 through L.B. 888 § 42. The statutes, however, originate from the Uniform Limited Liability Company Act, and follow a familiar formula:

On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor.<sup>25</sup>

To effectuate collection, a court may appoint a receiver subject to the charging order or “make all other orders necessary” to enforce the charging order.<sup>26</sup>

Upon a showing that the charging order will not provide payment to creditors “within a reasonable time,” a court may order foreclosure and sale of the charged LLC interest.<sup>27</sup> A foreclosure action against a member’s LLC interest is, however, subject to redemption where the member satisfies the judgment underlying the charging order and files a certified copy of the satisfaction with the court issuing the charging order.<sup>28</sup> Other LLC members are also empowered to satisfy another member’s judgment and may succeed to any rights against the debtor-member under the charging order.<sup>29</sup> As with general partnerships, members subject to charging orders may take advantage of statutory

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<sup>24</sup> Neb. Rev. Stat. § 67-274(b) (Reissue 2009); Neb. Rev. Stat. § 67-260 (Reissue 2009).

<sup>25</sup> Neb. Rev. Stat. § 21-142(a) (Reissue 2012).

<sup>26</sup> Neb. Rev. Stat. § 21-142(b) (Reissue 2012).

<sup>27</sup> Neb. Rev. Stat. § 21-142(c) (Reissue 2012).

<sup>28</sup> Neb. Rev. Stat. § 21-142(d) (Reissue 2012).

<sup>29</sup> Neb. Rev. Stat. § 21-142(e) (Reissue 2012).

exemptions, and a charging order is designated as the exclusive remedy against members to enforce a judgment against an LLC interest.<sup>30</sup>

**Practical Pointer:** The possible foreclosure and sale of an LLC interest under a charging order presents unique leverage for creditors. A creditor possessing a charging order against an LLC interest may seek out other LLC members and negotiate the sale of the debtor-member's share of the LLC under Neb. Rev. Stat. § 21-142(e). Where an LLC remains functional and profitable, other members may be willing to buy out the debtor's interest at a price high enough to satisfy the debt, but low enough to make the debtor's interest marketable.

As with partnership interests, an LLC interest is deemed to be personal property.<sup>31</sup> When a creditor receives a transferable interest, they remain unable to participate in the "management or conduct of the company's activities" or to have "access to records or other information concerning the company's activities."<sup>32</sup> Instead, creditors may receive LLC distributions and an accounting upon dissolution.<sup>33</sup> The LLC need not recognize a creditor's interest until it has "notice" of such interest, the debtor-transferor retains all other rights associated with the LLC interest.<sup>34</sup>

As with general partnerships, when an LLC member's partnership interest is subject to a charging order, a member may become dissociated by unanimous consent of other members where the charging order is foreclosed.<sup>35</sup> Dissociation may also occur where the debtor-member executes an assignment of the LLC interest for the benefit of creditors, or where the charging order causes dissociation by the terms of the operating agreement.<sup>36</sup> If the debtor-member's dissociation is a breach of any term of the operating agreement, the dissociation may be considered wrongful and subject the debtor-member

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<sup>30</sup> Neb. Rev. Stat. § 21-142(f)-(g) (Reissue 2012); *See also* Neb. Rev. Stat. §§ 25-1552 to 1563.02 (Reissue 2016).

<sup>31</sup> Neb. Rev. Stat. § 21-140 (Reissue 2012).

<sup>32</sup> Neb. Rev. Stat. § 21-141(a)(3) (Reissue 2012).

<sup>33</sup> Neb. Rev. Stat. § 21-141(b)-(c) (Reissue 2012).

<sup>34</sup> Neb. Rev. Stat. § 21-141(e) and (g) (Reissue 2012); *see also* Neb. Rev. Stat. § 21-103 (Reissue 2012).

<sup>35</sup> Neb. Rev. Stat. § 21-145(4)(B) (Reissue 2012).

<sup>36</sup> Neb. Rev. Stat. § 21-145(2) and (7)(B) (Reissue 2012).

to liability for damages to the LLC.<sup>37</sup> Moreover, if the charging order on a member's LLC interest is an event stated to cause dissolution in the operating agreement, dissolution and winding up may occur.<sup>38</sup>

**Practical Pointer:** A creditor may spend less and gain more seeking a charging order against a debtor's LLC interest, rather than piercing the veil of an LLC, where the business is still generating income. Creditors should determine the extent to which a debtor's LLC interest is functional and profitable before choosing which collection remedy to pursue. Where a debtor does not have significant control over LLC operations and the LLC does not otherwise meet the elements necessary to pierce the veil, a charging order against the LLC interest may be the only realistic option to pursue collection within the business entity.

**D. Rev. Rul. 77-137 – A Creditor-Assignee of a Limited Partnership Interest Must Handle Any Partnership Tax Consequences**

The following is the full text of IRS Revenue Ruling (Rev. Rul.) 77-137, which provides for partnership tax consequences in the event a creditor is assigned substantially all of a limited partnership interest:

A, a limited partner in a limited partnership formed under the Uniform Limited Partnership Act of a state, assigned the limited partnership interest to B. The agreement of the partnership provides, in part, that assignees of limited partners may not become substituted limited partners in the partnership without the written consent of the general partners. However, it also provides that a limited partner may, without the consent of the general partners, assign irrevocably to another the right to share in the profits and losses of the partnership and to receive all distributions, including liquidating distributions, to which the limited partner would have been entitled had the assignment not been made. Under the terms of the assignment A, who was the nominal limited partner under local law, agreed to exercise any residual powers remaining in A solely in favor of and in the interest of B.

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<sup>37</sup> Neb. Rev. Stat. § 21-144(b)(1) and (c) (Reissue 2012).

<sup>38</sup> Neb. Rev. Stat. § 21-147(a)(1) (Reissue 2012).

Held, even though the general partners did not give their consent to the assignment, since B, the assignee, acquired substantially all of the dominion and control over the limited partnership interest, for Federal income tax purposes B is treated as a substituted limited partner. Therefore, B must report the distributive share of partnership items of income, gain, loss, deduction, and credit attributable to the assigned interest on B's Federal income tax return in the same manner and in the same amounts that would be required if B was a substituted limited partner.<sup>39</sup>

Thus, creditors seeking charging orders or assignments against limited partnership interests should be wary of partnership tax consequences that may follow their collection efforts.

#### **E. Sample Charging Order (LLC)**

A sample charging Order is provided at the end of these materials and can be edited for use against partnership or LLC interests.

## **II. Enforcing Judgments against Corporate Stock, Trust Assets, and Other Property**

### **A. Garnishment of Corporate Stock**

The method of enforcing judgments against a debtor's closely-held stock in Nebraska is garnishment, not execution, despite the first instinct of some creditors' attorneys. "Through garnishment in aid of execution a garnishee becomes a 'stakeholder' or custodian holding a fund, credit, or property belonging to one or the other of the parties to a lawsuit producing the judgment for which execution is sought."<sup>40</sup> "Garnishment in aid of execution is an incident to a judgment or an ancillary procedure whereby a judgment creditor seeks to collect a judgment by reaching a judgment debtor's property in the hands of a third party."<sup>41</sup>

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<sup>39</sup> Rev. Rul. 77-137.

<sup>40</sup> *NC+ Hybrids v. Growers Seed Ass'n*, 219 Neb. 296, 300, 363 N.W.2d 362, 365 (1985), overruled in part on other grounds by *ML Manager, LLC v. Jensen*, 287 Neb. 171, 842 N.W.2d 566 (2014).

<sup>41</sup> *Id.*

Garnishment was expressly recognized as the appropriate collection remedy against corporate stock in early 19th century Nebraska law, in a series of cases argued by Nebraska's own Roscoe Pound. "[S]tock of the attachment defendant in a domestic corporation may be reached by garnishment."<sup>42</sup> The Nebraska Supreme Court explicitly provided for garnishment against corporations who hold stock for debtors:

Under our [garnishment statutes], a corporation may properly be made a garnishee in a case where the only property sought to be attached is capital stock of the company, owned by the defendant or held for his benefit. And such garnishee from the time of the service of notice upon it, becomes liable to account to the attaching creditor for such stock and its proceeds if he finally succeed in the action.<sup>43</sup>

The Nebraska Supreme Court indicated that stock garnishment should use the same procedures as garnishment against other kinds of property:

[The Nebraska Supreme Court is] of the opinion that the stock of a debtor may be reached by notice of garnishment duly served upon the corporation and that the equitable interest of the debtor may be seized by such notice and applied in payment of the debt. Such garnishment would not hold any stock which had been previously transferred in good faith, to a purchaser or pledgee, although a formal transfer thereof may not have been made upon the books of the corporation. The real, actual rights and interests of a stockholder will be reached by the garnishment, without regard to the apparent interest of the owner.<sup>44</sup>

In further appeals in the same case, the Nebraska Supreme Court stated that a stock garnishment allows a creditor to reach all rights represented by the stock:

A stockholder's interest in a corporation and in all of its property and rights is represented by his stock. There can be no question that the levy upon the stock by the garnishment of the corporation pursuant to the statute will impound the whole

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<sup>42</sup> *Farmers' & Merchants' National Bank of Galva, Illinois v. Mosher*, 63 Neb. 130, 139, 88 N.W. 552, 555 (1901).

<sup>43</sup> *Id.* at 140, 88 N.W. at 555 (1901) (quoting *National Bank of New London v. Lake Shore & M. S. R. Co.*, 21 Ohio St. 221 (1871)).

<sup>44</sup> *Id.*

interest of the stockholder in the property and rights of the corporation, and that the right to receive dividends goes with the stock.<sup>45</sup>

**Practical Pointer:** The language in Nebraska’s current form garnishment interrogatories is very broad. There are two specific interrogatories at the bottom of the garnishment interrogatories form that discuss “property belonging to the judgment debtor, or credits or monies owed to the judgment debtor, whether due or not,” other than wages. This language conceivably covers corporate stock in a garnishee’s possession and debts owed from the garnishee to the judgment debtor. If a garnishee is unaware of Nebraska’s stock garnishment procedure, it may be useful to point out this language in the garnishment interrogatories in further discussions with the garnishee’s representatives.

#### **B. Creditor’s Bills – Reaching Assets in Equity**

Where a “judgment debtor has not personal or real property subject to levy on execution,” Nebraska statutes and case law authorize the use of a creditor’s bill to reach other assets the debtor or third parties may possess to satisfy a creditor’s judgment.<sup>46</sup> “A creditor’s suit or bill is generally defined as an equitable proceeding brought by a creditor to enforce the payment of a debt out of property or interests of his debtor which cannot be reached by ordinary legal process.”<sup>47</sup> “A creditor’s bill is in the nature of an equitable execution, and its purpose is to bring into exercise the equitable powers of the court to enforce the satisfaction of judgments by means of equitable execution when execution at law cannot be obtained.”<sup>48</sup> “[T]he beginning of a creditor’s action to subject an equitable estate to the payment of a judgment gives a specific lien upon the property which it is sought to reach and this lien continues while the cause is pending.”<sup>49</sup>

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<sup>45</sup> *Farmers’ & Merchants’ National Bank of Galva, Illinois v. Mosher*, 68 Neb. 724, 726, 100 N.W. 133 (1904).

<sup>46</sup> Neb. Rev. Stat. § 25-1564 (Reissue 2016).

<sup>47</sup> *Doksansky v. Northwest Bank of Nebraska, N.A.*, 260 Neb. 100, 108, 615 N.W.2d 104 (2000) (quotations omitted).

<sup>48</sup> *Id.*

<sup>49</sup> *Nowka v. Nowka*, 156 Neb. 57, 66, 58 N.W.2d 600, 605 (1953).

Specifically, Nebraska recognizes two types of creditor's bills: "[t]he first is used to reach equitable assets or property of a debtor on which execution at law cannot be levied. The second is used in aid of an execution at law, as to set aside an encumbrance or a transfer of property made to defraud creditors."<sup>50</sup> There are three requirements for a creditor's bill: (1) the creditor must have a judgment against the debtor; (2) the creditor must allege and show that he has exhausted his remedy at law; and (3) the debtor must have some interest in property that the creditor is unable to reach through execution.<sup>51</sup>

In Nebraska, creditor's bills have been used to obtain collection from a debtor's beneficial interest in a resulting trust, and from a debtor's contingent interest in an estate under administration.<sup>52</sup> A creditor's bill has also been recently used to compel turnover of stock held in trust.<sup>53</sup> The Nebraska Supreme Court has indicated that Nebraska jurisprudence is consistent with the following general rule regarding reaching trust assets:

In order for equity to subject to the claims of creditors the interest of the beneficiary, it is essential that it be such an interest as could be enforced by the beneficiary himself; *creditors cannot reach the beneficiary's interest if the trustee has complete discretion* not only as to the time and manner of conferring the intended benefit but also as to whether it shall be conferred at all, or if disbursements are restricted to such amounts as are necessary for the comfortable maintenance and support of the [beneficiary].<sup>54</sup>

Moreover, the Nebraska Supreme Court has said that "the trustee of a discretionary support trust could be compelled to carry out the purposes of the trust in good faith," but that the trustee could not be compelled to submit to collection efforts that do not carry out

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<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> See *First Nat. Bank in Mitchell v. Daggett*, 242 Neb. 734, 497 N.W.2d 358 (1993); *Freemont Farmers Union Co-Op. Ass'n v. Markussen*, 136 Neb. 567, 286 N.W. 784 (1939).

<sup>53</sup> See *Comcast of Illinois X v. Multi-Vision Electronics, Inc.*, 504 F.Supp.2d 740 (2007).

<sup>54</sup> *Doksansky*, 260 Neb. at 109, 615 N.W.2d at 104 (quoting 21 Am.Jur.2d Creditor's Bills § 35 at 30 (1998)) (emphasis added).

trust purposes.<sup>55</sup> Thus, in general, the creditor's rights with respect to trust property sought in a creditor's bill can be no greater than that of the debtor.<sup>56</sup>

**Practical Pointer:** A creditor's bill is a remedy of last resort for most creditors in Nebraska. Creditor's bills will only be used in the unusual case where a creditor has attempted ordinary garnishment and execution and the judgment remains unsatisfied. Because of the equitable nature of a creditor's bill, it will only be available to a creditor whose judgment is entered or registered in a Nebraska district court.<sup>57</sup> To prove entitlement to a creditor's bill, a creditor will need to prepare for and attend an evidentiary hearing before the district court to explain the basis of the judgment and relevant collection history. Thus, a creditor's bill will cost a creditor significantly more to obtain than pursuing ordinary legal collection remedies.

### **C. Sample Creditor's Bill**

For a sample Application for Creditor's Bill, see the attached forms at the end of these materials.

### **D. Trust Assets – Creditors and Collection under Nebraska's Uniform Trust Code**

Creditors seeking to collect from trust assets should be aware of provisions that may limit collection efforts in Nebraska's Uniform Trust Code ("NUTC"). With certain exceptions, "the NUTC applies to all trusts created on or after January 1, 2005, and to all judicial proceedings concerning trusts commenced on or after January 1, 2005."<sup>58</sup> "To the extent a beneficiary's interest *is not subject to a spendthrift provision*, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means."<sup>59</sup>

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<sup>55</sup> *Id.* (citing *Smith v. Smith*, 246 Neb. 193, 198, 517 N.W.2d 394, 398 (1994)).

<sup>56</sup> *Id.*

<sup>57</sup> *See generally* Neb. Rev. Stat. § 24-302 (Reissue 2016).

<sup>58</sup> *In re Trust of Alexis*, 16 Neb. App. 416, 431, 744 N.W.2d 514, 526 (2008); Neb. Rev. Stat. § 30-38,110 (Reissue 2016).

<sup>59</sup> Neb. Rev. Stat. § 30-3846 (Reissue 2016) (emphasis added).

Nebraska law does authorize the use of certain spendthrift trust provisions limiting collection: “[a] beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided . . . a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.”<sup>60</sup> “A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.”<sup>61</sup> Spendthrift provisions are unenforceable, however, against family support creditors, creditors providing services “for the protection of a beneficiary’s interest in the trust,” and State or Federal claims.<sup>62</sup>

Discretionary trusts provide another hurdle against collection efforts. Nebraska statutes provide that a trust beneficiary’s creditor may not “compel a distribution that is subject to the trustee’s discretion,” even where the trust contains explicit distribution standards or the trustee has abused his discretion in failing to make a distribution.<sup>63</sup> Discretionary trusts are accessible even to family creditors only where the trustee has failed to comply with a standard of distribution or abused his discretion.<sup>64</sup>

**Practical Pointer:** Though creditors may be unable to collect from spendthrift or discretionary trusts directly by compelling distributions, patient creditors can still collect from these assets over time. For example, a creditor may seek a creditor’s bill against a debtor who is the beneficiary of a spendthrift or discretionary trust. The creditor may request the court to direct the debtor to account for and pay any money distributed from the trust for the debtor’s benefit into court before spending any part of the distribution. In this situation, the creditor can at least cut off some means for the debtor to live comfortably while avoiding collection.

On the other hand, creditors may have an easier time collecting against certain kinds of trusts under the NUTC. “During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.”<sup>65</sup> The same is true of trusts

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<sup>60</sup> Neb. Rev. Stat. § 30-3847(c) (Reissue 2016).

<sup>61</sup> Neb. Rev. Stat. § 30-3847(a) (Reissue 2016).

<sup>62</sup> Neb. Rev. Stat. § 30-3848(b) (Reissue 2016).

<sup>63</sup> Neb. Rev. Stat. § 30-3849(b) (Reissue 2016).

<sup>64</sup> Neb. Rev. Stat. § 30-3849(c) (Reissue 2016).

<sup>65</sup> Neb. Rev. Stat. § 30-3850(a)(1) (Reissue 2016).

that are revocable at a settlor's death, although creditors may have lower priority than surviving spouses and children claiming homestead, family, and property exemptions and allowances.<sup>66</sup>

Where a debtor is the settlor of an irrevocable trust, a creditor may reach the "maximum amount that may be distributed to or for the settlor's benefit."<sup>67</sup> Finally, "a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date."<sup>68</sup> Mandatory distributions include "income or principal which the trustee is required to make to a beneficiary under the terms of the trust," including distributions upon trust termination.<sup>69</sup>

#### **IV. Liabilities and Considerations when Taking over a Debtor's Interest in a Business**

As noted and discussed above, in some instances creditors may decide to take an assignment of a debtor's ownership interest in a partnership, LLC, or other business entity in satisfaction of a debt. Before taking over of a debtor's limited partnership interest, creditors should be especially careful to request, receive, and review a copy of the partnership agreement, if any exists. Under Nebraska law, creditor-assignees of a limited partnership interest may be required by the terms of a limited partnership agreement to contribute funds to the partnership or receive an allotted portion of partnership losses. Under Rev. Rul. 77-137, creditor-assignees may also face immediate partnership tax consequences as part of a takeover of a debtor's limited partnership interest.<sup>70</sup>

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<sup>66</sup> Neb. Rev. Stat. § 30-3850(a)(3) (Reissue 2016); *see also* Neb. Rev. Stat §§ 30-2316 and 30-2322 through 30-2324 (Reissue 2016).

<sup>67</sup> Neb. Rev. Stat. § 30-3850(a)(2) (Reissue 2016).

<sup>68</sup> Neb. Rev. Stat. § 30-3851(b) (Reissue 2016).

<sup>69</sup> Neb. Rev. Stat. § 30-3850(a) (Reissue 2016).

<sup>70</sup> *See generally* Neb. Rev. Stat. § 67-251 (Reissue 2009); Neb. Rev. Stat. § 67-257 (Reissue 2009); Neb. Rev. Stat. § 67-260 (Reissue 2009); Neb. Rev. Stat. § 67-270 (Reissue 2009); Neb. Rev. Stat. § 67-274 (Reissue 2009).

Creditors should also remember that under Nebraska law, the trend, with minor exceptions, is that creditor-assignees may be responsible for a business entity's liabilities incurred after the date upon which a creditor takes over an ownership interest in an entity. This trend is reflected in the law governing Nebraska general partnerships, limited partnerships, and LLCs. Recall, however, that the ownership interest a creditor stands to receive has a significant impact on the extent to which the creditor may be liable for a business entity's past, present, and future operations. Therefore, it is in a creditor's best interest to do a thorough study of any business entity in which a debtor proposes to offer an ownership interest in satisfaction of a debt.<sup>71</sup>

#### **V. Involuntary Bankruptcy – Procedures and General Requirements**

Involuntary bankruptcy is provided for by a single federal bankruptcy statute:

(a) An involuntary case may be commenced only under chapter 7 or 11 of this title, and only against a person, except a farmer, family farmer, or a corporation that is not a moneyed, business, or commercial corporation, that may be a debtor under the chapter under which such case is commenced.

(b) An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title-

(1) by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount, or an indenture trustee representing such a holder, if such noncontingent, undisputed claims aggregate at least \$10,000 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims;

...

(h) If the petition is not timely controverted, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was

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<sup>71</sup> See generally Neb. Rev. Stat. § 67-444 (Reissue 2009); Neb. Rev. Stat. § 21-132 (Reissue 2012); Neb. Rev. Stat. § 21-135 (Reissue 2009); Neb. Rev. Stat. §§ 21-149 and 21-150 (Reissue 2009).

filed. Otherwise, after trial, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed, only if-

- (1) the debtor is generally not paying such debtor's debts as such debts become due unless such debts are the subject of a bona fide dispute as to liability or amount . . . .<sup>72</sup>

Involuntary bankruptcy petitions are rare compared to voluntary petitions, in part due to the statutory burdens placed on petitioning creditors.<sup>73</sup> Involuntary bankruptcy is intended to be exercised for the good of the entire creditor body; it is not intended to be used in an exclusively self-serving manner as a collection device.<sup>74</sup> Involuntary bankruptcy is not to be used as a forum for the trial and collection of an isolated disputed claim, a practice condemned in prior decisions.<sup>75</sup> The remedy of involuntary bankruptcy was not intended to be a substitute for ordinary debt collection procedures.<sup>76</sup>

Some aspects of involuntary bankruptcy are uniquely applied to business debtors. A business debtor in an involuntary bankruptcy is permitted to continue operating the business during the pendency of the bankruptcy case.<sup>77</sup> An interested party may petition the bankruptcy court to set up a kind of interim receivership, using the U.S. Trustee to operate the business, during the bankruptcy proceedings.<sup>78</sup>

To prevail with a request for involuntary bankruptcy, the qualified petitioners must establish each element under 11 U.S.C. § 303 by a preponderance of the evidence.<sup>79</sup> Specifically, such proof involves showing that the debtor qualifies for either Chapter 7 or 11 bankruptcy, that at least three creditors have claims against the debtor, that the debtor

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<sup>72</sup> 11 U.S.C. § 303 (2017).

<sup>73</sup> *In re Murrin*, 477 B.R. 99, 104 (D. Minn. 2012) (citing 2-303 Collier on Bankruptcy § 303.01 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2009)).

<sup>74</sup> *Id.* at 105.

<sup>75</sup> *Id.* at 106.

<sup>76</sup> *In re Whiteside*, 240 B.R. 762 (Bkrtcy. W.D. Mo. 1999).

<sup>77</sup> 11 U.S.C. 303(f) (2017).

<sup>78</sup> 11 U.S.C. 303(g) (2017).

<sup>79</sup> *In re Kennedy*, 504 B.R. 815, 820 (S.D. Miss. 2014).

is not paying his debts as they become due, and that the debt is not subject to a “bona fide dispute.”<sup>80</sup>

“Determining whether an alleged debtor is generally not paying his debts as they become due is not a balance-sheet insolvency test based on a comparison of assets and liabilities . . . . It is a factual . . . determination, which requires consideration of both the amount of the debts not being paid and the number of creditors not being paid.”<sup>81</sup> The determination is generally made as of the date the involuntary petition is filed. *Id.* Factors for whether a debtor is paying debts as they become due may include: “(1) the number of unpaid claims; (2) the amount of such claims; (3) the materiality of the non-payments; and (4) the debtor's overall conduct in her financial affairs.”<sup>82</sup> “Under this analysis, a court may find that the alleged debtor is not generally paying his debts when he is not paying one hundred percent of his debts to only one creditor, or [when he is] paying most of his debts . . . to small recurring creditors, but is not paying a few creditors that make up the bulk of his debts.”<sup>83</sup>

Some bankruptcy courts have discussed a creditor’s good faith in the context of initiating involuntary bankruptcy proceedings. In fact, “many courts have read a good faith requirement into the bankruptcy code” at large.<sup>84</sup> Section 303(i) allows a debtor who successfully defends an involuntary bankruptcy to recover from petitioning creditors for costs, attorney’s fees, damages caused by a bad faith filing, and punitive damages. A court can preemptively require the petitioning creditors to post a bond to cover any amount of attorney’s fees, costs, and punitive damages later awarded by the court.<sup>85</sup> Debtors may also request that a court seal involuntary petition documents and other bankruptcy filings where the petition contains false allegations made by petitioning

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<sup>80</sup> *Id.* at 820-21; *See also* 11 U.S.C. § 109 (2017); 11 U.S.C. § 303(b) (2017); 11 U.S.C. § 303(h) (2017).

<sup>81</sup> *Id.* at 823 (quotations omitted).

<sup>82</sup> *Id.*; *see also In re Feinberg*, 238 B.R. 781 (8th Cir. B.A.P. 1999), *appeal vacated and dismissed on joint motion of the parties*.

<sup>83</sup> *Id.* (quotations omitted).

<sup>84</sup> *Id.* at 824; *see also In re Little Creek Dev. Co.*, 779 F.2d 1068, 1071 (5<sup>th</sup> Cir. 1986) (“Every bankruptcy statute since 1898 has incorporated literally, or by judicial interpretation, a standard of good faith for the commencement, prosecution, and confirmation of bankruptcy proceedings”).

<sup>85</sup> 11 U.S.C. 303(e) (2017).

creditors.<sup>86</sup> Thus, creditors should be sure they meet the requirements for filing, that they act with due diligence, and that they have the proper motives and factual bases before filing a petition for involuntary bankruptcy. Do not take an involuntary bankruptcy petition lightly.

## **VI. Receivership**

### **A. How It Works and When to Use It**

A receivership, in many ways, acts like an asset protection device or private bankruptcy in state court. A receiver marshals assets within the receivership estate and then takes directions from the court to use, distribute, protect, or liquidate those assets. The receiver's goal is generally to pay receivership creditors and manage assets consistent with the scope of the receiver's authority. The circumstances in which a party may request appointment of a receiver are limited by Nebraska statute:

1. In an action by a vendor to vacate a fraudulent purchase of property;<sup>87</sup>
2. In an action by a creditor to subject any property or fund to his or her claim;<sup>88</sup>
3. In an action between partners, limited liability company members, or others jointly owning or interested in any property or fund on the application of any party to the suit when the property or fund is in danger of being lost, removed, or materially injured;<sup>89</sup>
4. In an action for the foreclosure of a mortgage or . . . trust deed as a mortgage when the mortgaged property or property subject to the trust deed is in danger of being lost, removed, or materially injured or is probably insufficient to discharge the mortgage debt secured by the mortgage or trust deed;<sup>90</sup>
5. In connection with the exercise of the power of sale under a trust deed and following the filing of a notice of default under the Nebraska Trust Deeds Act when the property subject to the trust deed is in danger of being lost, removed, or

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<sup>86</sup> 11 U.S.C. 303(k) (2017).

<sup>87</sup> Neb. Rev. Stat. § 25-1081(1) (Reissue 2016).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> Neb. Rev. Stat. § 25-1081(2) (Reissue 2016).

- materially injured or is probably insufficient to discharge the debt secured by the trust deed;<sup>91</sup>
6. In an action brought pursuant to Neb. Rev. Stat. § 52-1705 to enforce a written assignment of rents provision contained in any agreement and the agreement provides for the appointment of a receiver;<sup>92</sup>
  7. In any case in which a mortgagor or trustor has agreed in writing to the appointment of a receiver;<sup>93</sup>
  8. After entry of a judgment or decree, to carry the judgment into execution, to dispose of the property according to the decree or judgment, or to preserve it during the pendency of an appeal;<sup>94</sup>
  9. In all cases where receivership is allowed by statute or where receivers have been allowed by common law courts of equity.<sup>95</sup>

Receivership is also authorized where a party can show fraudulent mismanagement of business property by an entity's officers.<sup>96</sup> In business collection cases, a creditor's most powerful grounds for receivership in Nebraska generally will be those that allow a creditor to subject property or funds to the creditor's claims<sup>97</sup> and those that allow for execution on a judgment or decree.<sup>98</sup>

**Practical Pointer:** A court ordering a receivership must require the applying party and proposed receiver to post bonds with the clerk of the court against any loss within the receivership.<sup>99</sup> The bond amount can be set in an amount up to double the value of the property in the receivership estate.<sup>100</sup> Before filing, both the applicant and the proposed receiver should consult with sureties to obtain sufficient bonds. If you do not

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<sup>91</sup> Neb. Rev. Stat. § 25-1081(3) (Reissue 2016).

<sup>92</sup> Neb. Rev. Stat. § 25-1081(4) (Reissue 2016).

<sup>93</sup> Neb. Rev. Stat. § 25-1081(5) (Reissue 2016).

<sup>94</sup> Neb. Rev. Stat. § 25-1081(6) (Reissue 2016).

<sup>95</sup> Neb. Rev. Stat. § 25-1081(7) and (8) (Reissue 2016).

<sup>96</sup> *Ponca Mill Co. v. Mikesell*, 55 Neb. 98, 75 N.W. 46 (1898).

<sup>97</sup> Neb. Rev. Stat. § 25-1081(1) (Reissue 2016).

<sup>98</sup> Neb. Rev. Stat. § 25-1081(7) (Reissue 2016).

<sup>99</sup> Neb. Rev. Stat. § 25-1084 (Reissue 2016).

<sup>100</sup> *Id.*

have good contacts with a surety company who can provide the necessary bonds, talk to a few local insurance agents; they can generally point you in the right direction.

Nebraska's receivership statutes sometimes use antiquated language.<sup>101</sup> But the statutes allow a party to commence an action for receivership through a modified procedure for service of a summons and complaint, which the statute calls an "application," in a civil case.<sup>102</sup> The applicant must give "notice to all parties to be affected" by the application for receivership; if an interested party is represented by an attorney-of-record, the applicant may serve the interested party's attorney.<sup>103</sup> The application should contain the name of the proposed receiver, the receiver's proposed sureties, and the applicant's proposed sureties.<sup>104</sup> If circumstances justifying a receivership arise in a collateral case, an applicant may move the court to commence a receivership by motion, rather than formal filing and service of an application for receivership.<sup>105</sup>

If an emergency or delay threatens the rights of any interested party in the receivership, a party may move the court to have the sheriff take immediate temporary possession of the property at issue.<sup>106</sup> If the court denies a request for immediate temporary possession of property in the receivership estate, the court must make restitution of the property to the party from whom it was taken.<sup>107</sup>

Any party to a receivership action may object to the receivership, valuation of property in the receivership estate, or the receiver proposed by the applicant.<sup>108</sup> Any party to a receivership may also nominate a different receiver for appointment.<sup>109</sup> Nominating a different receiver requires a party and his proposed receiver to post bonds just as if they were the party making the original application for receivership. Regardless of the party

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<sup>101</sup> See Neb. Rev. Stat. § 25-1082 (Reissue 2016).

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> Neb. Rev. Stat. § 25-1085 (Reissue 2016).

<sup>106</sup> Neb. Rev. Stat. § 25-1083 (Reissue 2016).

<sup>107</sup> *Id.*

<sup>108</sup> Neb. Rev. Stat. § 25-1086 (Reissue 2016).

<sup>109</sup> *Id.*

making the nomination, a receiver may not be an interested party in or legal counsel for an interested party in the receivership proceedings.<sup>110</sup>

If the court appoints a receiver, the order appointing the receiver must contain special directions about the receiver's powers, duties, and any limits to the receiver's powers and duties.<sup>111</sup> The receiver may not act outside the powers and duties set forth in the court's order of appointment. Because of the inherently limited nature of receivership proceedings, the receiver only has the power to affect the property of "any party to the suit, and no others."<sup>112</sup> If a receiver acts outside their authority, they may be punished with contempt, and the court may order the sheriff to repossess property from the receiver.<sup>113</sup> For purposes of appeal, the appointment of a receiver, orders giving a receiver directions, and confirmation of a sale by a receiver are considered final appealable orders.<sup>114</sup>

Receivers are entitled to compensation for handling property in the receivership estate.<sup>115</sup> A receiver's compensation is determined based on the tasks the court assigns them. Where a receiver is appointed to preserve and protect property, or continue to operate a business, during litigation, the receiver may be awarded a "salary or lump sum."<sup>116</sup> When a receiver is appointed to wind up a business, liquidate assets, and distribute assets, the receiver is paid a "percentage upon the cash received and properly accounted for by them."<sup>117</sup> The receiver's fees may be increased where they perform extraordinary services or decreased where they perform poorly.<sup>118</sup>

**Practical Pointer:** Receivership fees are an important factor in determining whether a creditor should apply for receivership. Receivership fees will ordinarily be paid

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<sup>110</sup> *Id.*

<sup>111</sup> Neb. Rev. Stat. § 25-1087 (Reissue 2016).

<sup>112</sup> Neb. Rev. Stat. § 25-1088 (Reissue 2016); see also *Smiley v. Sioux Beet Syrup Co.*, 71 Neb. 581, 99 N.W. 263 (1904).

<sup>113</sup> Neb. Rev. Stat. § 25-1091 (Reissue 2016).

<sup>114</sup> Neb. Rev. Stat. § 25-1090; *Robertson v. Southwood*, 233 Neb. 685, 447 N.W.2d 616 (1989); *Lewis v. Gallemore*, 173 Neb. 441, 113 N.W.2d 595 (1962).

<sup>115</sup> Neb. Rev. Stat. § 25-1092 (Reissue 2016).

<sup>116</sup> Neb. Rev. Stat. § 25-1092(1) (Reissue 2016).

<sup>117</sup> Neb. Rev. Stat. § 25-1092(2) (Reissue 2016).

<sup>118</sup> *Id.*

by the petitioning parties. Creditors should carefully weigh the value they stand to obtain from the receivership against the costs of paying the receiver. Because of this cost-benefit analysis, receivership is likely to be used more often in cases involving property of significant value, large outstanding amounts due, and non-compliant debtors who favor hiding assets.

**B. Sample Application for Receivership**

For a sample Application for Creditor's Bill, see the attached forms at the end of these materials.

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

ANGRY CREDITORS, INC., )  
A Nebraska Corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
PENNILESS DEBTOR, an )  
individual, )  
 )  
Defendant. )

Case No. \_\_\_\_\_

**APPLICATION FOR  
CHARGING ORDER**

COMES NOW the Plaintiff/Judgment Creditor, Angry Creditors, Inc., and pursuant to Neb. Rev. Stat. § 21-142, moves the Court to enter an order charging the transferable interest of Penniless Debtor, Judgment Debtor and member of Piggy Bank, LLC, with payment of the unsatisfied amount of the Plaintiff's/Judgment Creditor's judgments with interest provided by law.

In support of the instant Application for Charging Order, the Plaintiff/Judgment Creditor states as follows:

1. On December 25, 2014, the District Court of Douglas County, Nebraska entered judgment in favor of Angry Creditors, Inc., and against Penniless Debtor in the amount of \$100,000.00, plus the costs of the action (\$1,000.00), and post-judgment interest of \$1.00 ("the Judgment"). A true and correct copy of the Judgment is attached as Exhibit "A" and incorporated herein by reference.

2. The application for registration of the trade name Piggy Bank, LLC was filed with the Nebraska Secretary of State's office on July 29, 2014 by Penniless Debtor,

Applicant for or Legal Representative of Piggy Bank, LLC. A true and correct copy of the application is attached as Exhibit “B” and incorporated herein by reference.

3. Piggy Bank filed Articles of Organization with the Nebraska Secretary of State on May 7, 2014. A true and correct copy of the Articles is attached as Exhibit “C”.

4. Upon information and belief, Penniless Debtor, agent for Piggy Bank, LLC, is a member of Piggy Bank, LLC.

5. As of April 1, 2015, Penniless Debtor owes \$100,000.00, plus interest and costs to Plaintiff/Judgment Creditor on the Judgment. A true and correct copy of the Judgment is attached as Exhibit “C” and incorporated herein by reference

6. Pursuant to Neb. Rev. Stat. § 21-142 (Reissue 2012), the Plaintiff/Judgment Creditor is entitled to a charging order to receive any distributions by Piggy Bank, LLC to which the Judgment Debtor would otherwise have been entitled with respect to the interest of the Judgment Debtor in Piggy Bank, LLC.

WHEREFORE, the Plaintiff/Judgment Creditor prays for an order charging the Judgment Debtor’s transferable interest, including any distributions to which the Judgment Debtor would otherwise have been entitled with respect to the interest of the Judgment Debtor in Piggy Bank, LLC, with payment of the unsatisfied amount of the Judgment Creditor’s judgment, with interest, plus such further relief as is just.

Angry Creditors, Inc.  
Plaintiff,

By:\_\_\_\_\_

[Attorney Signature Block]

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

ANGRY CREDITORS, INC.,	)	Case No. _____
A Nebraska Corporation,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<b>APPLICATION FOR</b>
	)	<b>CREDITOR’S BILL</b>
	)	
PENNILESS DEBTOR, an	)	
individual,	)	
	)	
Defendant.	)	

COMES NOW, Angry Creditors, Inc., Plaintiff and Judgment Creditor herein, and pursuant to Neb. Rev. Stat. § 25-1564 (Reissue 2008), moves the Court to enter an order placing an equitable lien upon the beneficial interest of and any income or distributions to Penniless Debtor, Defendant and Judgment Debtor herein, from the Pennywise Family Trust (“the Trust”) [*or other complex asset distributing funds to the debtor*]. In support of its Application, Plaintiff states and alleges as follows:

1. Plaintiff is a Nebraska Corporation in good standing that provides consumer lending and financial services to Nebraska consumers primarily in the City of Omaha, Nebraska.
2. Defendant is an individual residing at 42 Wallaby Way, Omaha, Douglas County, Nebraska, with his pet clown fish, Nemo.
3. This Court has jurisdiction over this matter pursuant to Neb. Rev. Stat. § 24-302 (Reissue 2008). Venue is proper in this county pursuant to Neb. Rev. Stat. § 25-403.01.
4. Defendant is indebted to Plaintiff in the amount of \$100,000.00, plus

accrued interest, because of a judgment entered against Defendant in the Keya Paha County District Court on December 25, 2014. A true and correct copy of the judgment is attached hereto, incorporated herein, and marked as Exhibit “A”.

5. On January 1, 2015, the judgment of the Keya Paha County District Court was transcribed and registered in the District Court for Douglas County, Nebraska, pursuant to Neb. Rev. Stat. § 25-1303 (Reissue 2008). A true and correct copy of the registered judgment is attached hereto, incorporated herein, and marked as Exhibit “B”.

6. On or about February 14, 2015, an execution was issued upon the above-transcribed and registered judgment against the real and personal property of Defendant, to the Sheriff of Douglas County, Nebraska, in which county Defendant then resided.

7. The above-described execution was returned by the Sheriff wholly unsatisfied.

8. Plaintiff has attempted other lawful means of collection against Defendant under Nebraska law, including [*insert description of collection activity*]. Plaintiff’s other attempts to collect its judgment have been unsuccessful to date.

9. Plaintiff is informed, believes, and upon information alleges that Defendant is a named beneficiary of the Pennywise Family Trust.

10. Plaintiff seeks, pursuant to Neb. Rev. Stat. § 25-1564 (Reissue 2016), to impress an equitable lien on the beneficial interest of and trust distributions to Defendant, and to require any and all trustees of the Pennywise Family Trust to account for any distributions made to Defendant under the terms of the Trust by making reports of each distribution to the Clerk of the Douglas County District Court for the Plaintiff’s benefit.

WHEREFORE, Plaintiff requests that the Court enter an Order directing:

- A. That a lien for the Plaintiff's benefit be imposed on the beneficial interest of, and any distributions made to, Defendant from the Pennywise Family Trust;
- B. That any and all trustees for the Pennywise Family Trust be compelled to account for each distribution to Defendant from the Pennywise Family Trust for the Plaintiff's benefit;
- C. That the Defendant be enjoined and prohibited from transferring or interfering with the his beneficial interest in the Trust and the lien placed thereon;
- D. That the Defendant be enjoined and prohibited from making any assignment, confessing any judgment, or enabling other creditors in any way to obtain a preference over Plaintiff with respect to any distributions to Defendant from the Pennywise Family Trust;
- E. That the Plaintiff be awarded attorney's fees and costs for bringing this matter before the Court; and
- F. That Plaintiff is entitled to such other and further relief as if just and appropriate in this case.

Angry Creditors, Inc.  
Plaintiff,

By: \_\_\_\_\_

[Attorney Signature Block]

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

ANGRY CREDITORS, INC., )  
A Nebraska Corporation, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
PENNILESS DEBTOR LLC, a )  
Nebraska LLC, )  
 )  
Defendant. )

Case No. \_\_\_\_\_

**APPLICATION FOR  
RECEIVERSHIP**

COMES NOW, Angry Creditors, Inc., Plaintiff and Judgment Creditor herein, and pursuant to Neb. Rev. Stat. §§ 25-1081 et seq., moves the Court to enter an order appointing a receiver to manage, distribute, and liquidate the property and funds of Penniless Debtor LLC, Defendant and Judgment Debtor herein. In support of its Application, Plaintiff states as follows:

1. Plaintiff is a Nebraska Corporation in good standing that provides consumer lending and financial services to Nebraska consumers primarily in the City of Omaha, Nebraska.
2. Defendant is a Nebraska LLC that provides birthday party clown services to Nebraska consumers primarily in the City of Omaha, Nebraska.
3. This Court has subject matter jurisdiction over this matter pursuant to Neb. Rev. Stat. § 24-302 (Reissue 2016). This Court has personal jurisdiction over this matter under Neb. Rev. Stat. § 25-536 (Reissue 2016). Venue is proper in this county pursuant to Neb. Rev. Stat. § 25-403.01 (Reissue 2016).
4. Defendant is indebted to Plaintiff in the principal amount of \$15 million,

plus accrued interest, because of a judgment entered against Defendant in the Cherry County District Court on February 14, 2015.

5. The judgment involved Defendant's negligent provision of birthday party clown services that scared a large group of children nearly to death. A true and correct copy of the judgment is attached hereto, incorporated herein, and marked as Exhibit "A".

6. On March 1, 2017, the judgment of the Cherry County District Court was transcribed and registered in the District Court for Douglas County, Nebraska, pursuant to Neb. Rev. Stat. § 25-1303 (Reissue 2016). A true and correct copy of the registered judgment is attached hereto, incorporated herein, and marked as Exhibit "B".

7. On information or belief, the Defendant maintains a large warehouse of clown supplies, business equipment, vehicles, and other property or funds in Douglas County, Nebraska.

8. On information or belief, other lawful means of collection against the Defendant would be unduly burdensome and expensive to Plaintiff.

9. On information or belief, Defendant has intentionally hidden assets from Plaintiff in an attempt to avoid collection of Plaintiff's judgment.

10. Receivership is the most efficient means to carry Plaintiff's judgment into execution.

11. Plaintiff nominates Jon Snow, Esq., to serve as receiver in this case.

12. Jon Snow's surety for purposes of this receivership is Gigantic Surety Company of Nebraska, Inc.

13. Plaintiff's surety for purposes of this receivership is Mid-Sized Surety

Company of Nebraska, Inc.

14. The following interested parties may be affected by this application for receivership and will be given notice under Nebraska law:

<u>Name</u>	<u>Address</u>

WHEREFORE, Plaintiff requests that the Court enter an Order for the following relief:

- A. Grant Plaintiff's Application for Receivership;
- B. Appoint John Snow as receiver of the assets of the Defendant;
- C. Grant John Snow authority to seize all property and funds of the Defendant and manage, distribute, or liquidate them as necessary to satisfy Plaintiff's judgment against Defendant;
- D. Award Plaintiff its costs and attorney's fees for bringing this matter before the Court, as allowed by law; and
- E. Grant such other or further relief as is just in this case.

Angry Creditors, Inc.  
Plaintiff,

By: \_\_\_\_\_

[Attorney Signature Block]